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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,281	03/18/2004	Billy K. Bayne	14893US02	5650
23446 7590 04/02/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
FOX, CHARLES A				
ART UNIT		PAPER NUMBER		
3652				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/803,281

Applicant(s)

BAYNE ET AL.

Examiner

Charles A. Fox

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. Claim 1 is directed to a lifting device, but has newly added limitations dealing with a trash truck. This is improper as the preamble only specifies a stand alone invention, but the combination of the lift device and a truck is positively recited in the claim. In the rejection of claim 1 below the lift device is treated without relationship to what it may be mounted upon. Claims 2-5 are also rejected as they contain the same indefinite limitations of claim 1 based upon their dependency.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. in view of Arrez et al. Regarding claims 1,4-6,8 and 10 Redding et al. 5,024,573 teach a cart lifter comprising:

a base plate (S) connected to a vehicle;

a face plate (32) attached to said base plate;
a saddle (40) fixed to said face plate;
at least one lifting arm (20) attached to a rotatable shaft at a first end and to said face plate at a second end;
wherein said rotatable shaft rotates at least 210 degrees;
at least one latch arm (80) pivotally connected to the base plate at a first end and to a latch slide at a second end;

wherein a substantial portion of said face plate is capable of being positioned behind the base plate when the device is in a lowered state and capable of rotation such that the top of the face plate is behind the base plate when in the raised position. Redding et al. do not teach the rotation actuator as being a rotary motor. Arrez et al. US 6,503,045 teaches a lift device for carts comprising:

a base plate mounted on a substantially vertical surface;
a frame structure for engaging a cart;
a rotary motor for lifting said frame structure;
at least one arm (64) connecting said frame with said motor for lifting a cart;
a saddle and a sliding latch for securing said cart during dumping;
wherein said device may be mounted on the rear or side of a collection vehicle.
It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Redding et al. with a rotary motor as taught by Arrez et al. in order to simplify the mounting of the actuator as well as reducing its size while using a well known means to operate a lift of this type.

Regarding claim 2 Redding et al. also teach the arm as being connected to an inner surface of the face plate.

Regarding claims 3 and 9 Redding et al. also teach a sliding latch guide (44) attached to the inside of said face plate.

Regarding claim 7 Redding also teach the vehicle as being a rear-loading vehicle.

Regarding claims 11-15 Redding teaches a method of lifting containers comprising the steps of:

- providing a base plate for a lifting device;

- providing a face plate for interfacing with a container to be lifted;

- operating a cart lift from a position where the faceplate is substantially below and inward of a hopper edge to a position where it engages a first lifting point on a refuse cart;

- further operating the device to cause a second lift point on said cart to be engaged;

- further operating the device to a dumping position where the faceplate is substantially located inward of said hopper edge;

- providing the hopper edge at the rear of the vehicle;

- providing a face plate containing a saddle and a sliding latch and its associated guide. Redding does not teach providing the device with a rotary motor.

Arrez et al. discloses a method of lifting containers comprising the steps of:

providing a base plate for a lifting device mounted on a substantially vertical surface;

providing a frame structure for engaging a cart;

providing a rotary motor for lifting said frame structure;

providing a face plate on said frame structure for interfacing with a container to be lifted;

operating a cart lift from a position where the faceplate is substantially below and inward of a hopper edge to a position where it engages a first lifting point on a refuse cart;

further operating the device to cause a second lift point on said cart to be engaged;

further operating the device to a dumping position where the faceplate is substantially located inward of said hopper edge;

providing the hopper edge at the rear or the side of the vehicle.

It would have been obvious to one of ordinary skill in the art, at the time of invention to modify the methods taught by Redding et al. by providing a rotary motor as taught by Arrez et al. in order to simplify the mounting of the actuator as well as reducing its size while using a well known means to operate a lift of this type.

Response to Amendment

The amendments to the claims filed on December 26, 2007 have been entered into the record.

Response to Arguments

Applicant's arguments filed December 26, 2007 have been fully considered but they are not persuasive. Regarding the use of large dumpsters with the Arrez reference it is noted that the size of the device is chosen such that it will not interfere with the dumping of large containers into the vehicle. As such the reference does not teach away from the intended use of the Redding reference, as it seeks to solve a similar problem. Regarding the mounting location of the base plate this is not novel, and the new limitation is met by the Arrez reference. Regarding the portion of the faceplate that is behind the base plate when in the dump position the term substantial portion is met by the Redding reference and the Arrez reference as they both show this feature. Further more the term is not explicitly defined in the specification as being any particular amount. Therefore the claims are finally rejected as above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Fox/
Primary Examiner, Art Unit 3652

